APPENDIX A

No. 81-600 Filed 4-29-82

In The
APPELLATE COURT OF ILLINOIS
Third District

LAURA L. BURKART,

Plaintiff-Appellee,

v.

MARY LOU TORAASON,

Defendant-Appellant.

Appeal from the Circuit Court of LaSalle County.
Honorable **Thomas R. Flood**, *Judge Presiding.*

Mr. JUSTICE ALLOY delivered the opinion of the Court:

This is an appeal by the defendant, Dr. Mary Lou Toraason, from the judgment against her in plaintiff Laura Burkart's medical malpractice action. The jury returned a verdict for the plaintiff in the amount of $350,000, and judgment thereon was entered by the trial court. On appeal, the defendant raises four issues: (1) whether the evidence indicates, as a matter of law, that plaintiff's action is time barred, as having been filed more than two years after plaintiff knew or should have known of her injury and its wrongful cause; (2) whether the jury's verdict on the limitations issue was against the manifest weight of the evidence; (3) whether the damages are excessive; and (4) whether the verdict, as to liability, is against the manifest weight of the evidence.

The record discloses the following pertinent evidence with respect to the issues on appeal. In June 1975, plaintiff Laura Burkart, then 21 years old, and two months pregnant, began seeing Dr. Mary Lou Toraason for prenatal care. Mrs. Burkart's first child had been born in 1974, and Dr. Toraason had rendered prenatal and postnatal care during that pregnancy. Delivery of the first child had been handled by her brother, Dr. Goodwin Toraason. During the second pregnancy, Mrs. Burkart was examined on a regular basis by Dr. Mary Lou Toraason. During the prenatal period it was determined that a cesarean section delivery would be required, as the baby appeared to be positioned in a transverse lie. On February 1, 1976, Laura Burkart was admitted to Illinois Valley Community Hospital, in Peru, Illinois, preparatory to delivery.

On the following day, February 2, 1976, Mrs. Burkart's labor began. After further examination it was determined that a C-section would not be required and that it would be a normal birth. Upon Mrs. Burkart's arrival in the delivery room, Dr. Toraason performed a medial-lateral episiotomy on her. A medial-lateral episiotomy is a surgical incision made at the bottom of the vagina, extending medially and laterally through the perineal body or perineum, that area of tissue between the vagina and rectum. The purposes of an episiotomy are to facilitate exit of the baby, to make a clean incision which is more easily repairable than a jagged tissue laceration resulting from childbirth, and also to relieve the pressure of the baby's head on the perineum. Dr. Toraason made a two-inch incision in the perineum of Mrs. Burkart. Within five minutes after the episiotomy, plaintiff's second child was born.

After the birth of the baby, the placenta was removed and the defendant doctor sutured the episiotomy incision. Prior to the suturing, according to her testimony at trial, Dr. Toraason inspected the incision and it did not extend into the rectum. She stated that the edge of the incision was probably about ¾ inch from the rectum. In addition, the doctor inspected the perineal body for lacerations,

any pulling apart of the vaginal tissue other than the surgical incision. She saw none. Dr. Toraason stated she would have been able to recognize any laceration before suturing, if such a condition had existed. Chromic dissolvable material was used in the suturing of the episiotomy incision.

At trial, Dr. Toraason agreed that the treating physician was responsible for proper suturing of an episiotomy and for determining whether any laceration had occurred in the perineum.

In her trial testimony Dr. Toraason stated she used a curved needle when suturing the episiotomy, placing the index finger of her left hand underneath the bottom of the incision while suturing with her right hand, to keep the needle and sutures visible. Dr. Toraason placed her finger on top of plaintiff's rectum but did not insert her finger into the rectum while suturing. She testified at trial that placing a finger in the rectum would have contaminated her surgical glove. Dr. Toraason further stated that subsequent to suturing, plaintiff's rectum was free of sutures and would accommodate a bowel movement as well as the insertion of a suppository. After completing the suturing, the doctor advised the patient she would see her the next day.

Dr. Toraason saw Mrs. Burkart while making her rounds later in the day of February 2, 1976, although she did not awaken her from sleep. She reviewed plaintiff's patient chart on that date and on each day plaintiff was in the hospital. Mrs. Burkart slept until around 5:00 P.M. on that day and had a solid food supper that night. On February 3, Mrs. Burkart was feeling pain in her sutures as well as bowel pressure. She had not had a bowel movement since the delivery. When she saw Dr. Toraason that morning, Mrs. Burkart advised her of these conditions, which were also noted on hospital records for that day. Dr. Toraason advised Mrs. Burkart that she would give her something for the pain and also a laxative. She did not perform an examination on the plaintiff that day. Plaintiff continued to eat well, but had no bowel movement on February 3. She had difficulty

sleeping that night because of painful sutures. Medication was administered to help relieve the pain. She continued to notice pressure in her rectum.

On February 4, 1976, Mrs. Burkart continued eating well. Her sutures remained painful and the bowel pressure had worsened. She complained of both, and Dr. Toraason performed a visual examination of the sutures, but did not manually examine the sutured area. A laxative was prescribed and administered in the early afternoon. Mrs. Burkart testified that on February 4 Dr. Toraason advised her that she perhaps could be discharged the next day, providing someone was available to stay at home with her. Dr. Toraason stated that there was no discussion concerning discharge at that time. In any event, on February 4 Mrs. Burkart continued to experience a "poking" sensation in her sutures and bowel pressure. She had no bowel movement on February 4, 1976. On February 5, 1976, Mrs. Burkart ate a full breakfast at the hospital and noticed greater pressure in her bowels and continued pain in the sutures. She was seen by Dr. Toraason that morning and informed the doctor of her continued problems. The doctor reviewed her charts and was aware that she had a tender perineum that day, as well as the prior days. Mrs. Burkart was released by Dr. Toraason that day from the hospital. Dr. Toraason testified that Mrs. Burkart insisted on the discharge, and that she wanted her to stay for a longer period of time. Mrs. Burkart denied that the doctor indicated she wanted her to remain in the hospital for a longer period of time. In any event, Dr. Toraason gave the order to discharge and Mrs. Burkart left. Dr. Toraason did not perform a rectal examination or any other examination on Mrs. Burkart the day of February 5, prior to discharge. At trial, Dr. Toraason stated it was "not significant" to discharge a patient after childbirth without the patient having had a bowel movement and without performing a rectal examination. Dr. Toraason testified she was unaware whether or not it was accepted medical practice in the LaSalle/Peru community to discharge a mother postpartum without a bowel movement and without a rectal examination. At the time of dis-

charge, Mrs. Burkart continued to experience soreness and rectal pressure. She arrived at her home about 2:00 P.M. By that time, her bowel pressure worsened, and she called Dr. Toraason at her office, informing her she had still had no bowel movement. According to Mrs. Burkart, the doctor prescribed milk of magnesia and glycerin suppositories. Dr. Toraason did not remember the phone call and had no record of it in Mrs. Burkart's records.

Mrs. Burkart had taken the milk of magnesia but had been unable to insert the suppository. While in the bedroom, she had a sudden urge for a bowel movement. When she reached the bathroom, she had a bowel movement, accompanied by bleeding. Afterwards, she was helped by her husband and mother to the livingroom couch where she remained for about 30 minutes. She noticed that the feeling of pressure was gone, but the stinging sensation now felt like an open wound.

Mrs. Burkart then called Illinois Valley Community Hospital-Peru and spoke with a woman there. The informed the woman that she had a bowel movement, with bleeding, and inquired if it were possible that she had broken her stitches. The woman advised her that it was not probable and that many times the outer surface of the stitches would let loose a bit and that bleeding would occur. During the three or four weeks that followed, Mrs. Burkart had two sitz baths a day, as instructed prior to discharge. During this time she continued to experience difficulty with bowel movements, although the pain lessened. The open wound feeling continued.

Dr. Toraason next saw Mrs. Burkart at her office, in March, 1976, for the baby's 30-day checkup. The doctor did not examine the mother at that time. Upon inquiry, Mrs. Burkart informed the doctor of the February 5 bowel movement and bleeding. When asked if she was still having a lot of problems, Mrs. Burkart said she was not. Dr. Toraason informed her she would examine her at the six-week checkup. Dr. Toraason did not recall being informed of the February 5 episode at the child's 30-day checkup.

Two weeks later, Mrs. Burkart arrived at the doctor's office for her six week checkup. Upon examining the plaintiff's rectal/vaginal area, the doctor found a rectal/vaginal fistula, which is an opening between the rectum and the vagina, that is, a laceration of the sphincter muscle of the rectum. Dr. Toraason told Mrs. Burkart of her condition and also scheduled an appointment for her with a specialist, Dr. Louis Foley, for additional treatment. Dr. Toraason testified that Mrs. Burkart told her that she had been straining for a bowel movement for two days before the bowel movement with the bleeding occurred. Mrs. Burkart denied this, saying that she never told the doctor that and that the movement came naturally, not as a result of her straining. She did advise the doctor at the exam that she thought she had ripped her stitches and that something was wrong. Dr. Toraason was shocked at Mrs. Burkart's medical condition and did not document it, even though she agreed it was an important part of the records. At no time during her treatment of Mrs. Burkart did Dr. Toraason advise or suggest that she felt it was her treatment which was the cause of the rectal/vaginal fistula. Dr. Toraason provided no further medical care for Mrs. Burkart, although she continued to examine the infant.

Mrs. Burkart first consulted with Dr. Louis Foley three or four days after her six-week examination by Dr. Toraason. According to Dr. Foley, the history given by Mrs. Burkart was that she had trouble with her stitches and that they "broke open." She indicated that although she could control bowel movements, she could not control bowel gas. She indicated postpartum constipation, with bleeding and disengagement of sutures. Dr. Foley's physical examination indicated an obvious third-degree laceration, an opening between the vagina and rectum, which appeared to be healing well. Dr. Foley advised a six-month wait before any repair surgery. He advised Mrs. Burkart that surgery would be required to repair the laceration and that the success rate was slim. Six months later, Mrs. Burkart again visited with Dr. Foley, wherein he advised her that surgery could then be planned. She informed him of her continued difficulty in con-

trolling bowel movements and bowel gas. Plaintiff also would testify later that sexual relations with her husband were minimal during this time, as it was uncomfortable for her, and, she believed, unpleasant for her husband. She had to bathe after every bowel movement, and continued to do so until repair of the perineum was accomplished in February, 1979. Mr. Burkart would confirm the sex-life related problems in his trial testimony, adding that his wife's mental attitude toward many things changed after the onset of her physical problems.

In March, 1977, almost six months from the previous appointment, Mrs. Burkart again saw Dr. Foley. According to the doctor, Mrs. Burkart informed him of her wish to defer surgery at that time because of insufficient funds and insufficient insurance coverage. He advised her again of the high risks of the surgery, including the probability that the repair would break down, leaving a worse condition than before surgery. Dr. Foley did not have any conversations with Mrs. Burkart in which he indicated that Dr. Toraason was in any way the cause or to blame for any of Mrs. Burkart's problems. Between March, 1977 and November, 1977, Mrs. Burkart continued to experience problems controlling bowel movements and with bowel gas.

In November, 1977, Mrs. Burkart consulted Dr. William J. Farley, a physician and surgeon, specializing in obstetrics and gynecology. He had delivered over 7500 babies in his 31 years of practice in the LaSalle/Peru area. Mrs. Burkart came to him complaining of pain in the pelvic area. Upon performing an examination, Dr. Farley noted a deformity, one vestibule or common opening that incorporated the vagina and rectum. Dr. Farley termed the condition a cloaca, because the partition between the rectum and vagina was completely gone, as opposed to a rectal-vaginal fistula where there is a pinpoint opening between the vagina and the rectum. He had not seen the condition in his private practice, although he had observed it during his service days. He did not recall Mrs. Burkart stating that she had strained for several days to have a bowel movement, thereby causing the cloaca.

At trial, Dr. Farley stated that the cloaca condition usually follows childbirth where there has been a laceration of the rectal mucosa that has not healed and opened with pressure; or, where a rectal laceration was sutured with the sutures too close together so that the circulation at the edges of the wound would become necrotic and die, causing the wound to open. He also stated that infection in the colon and vaginal areas can result from childbirth and can cause stitches to release. He stated that infection could have been an exciting force to cause the opening, but he did not think that infection in the perineal area would or could cause the wound to open unless an opening into the rectum already existed. He also indicated that a bowel movement in and of itself could not cause a cloaca formation without a prior opening in the rectal mucosa.

Dr. Farley testified that if a patient of his had no bowel movement after childbirth, a rectal examination would be performed prior to discharge, to be sure no fecal impaction is developing in the lower bowel. He stated that if no impaction is present, a patient could be discharged. He stated that a rectal examination with a finger is the only way to check for fecal impaction. Dr. Farley testified that he did not know the exact cause of Mrs. Burkart's condition when he examined her approximately one and one-half years after the date of the occurrence.

Dr. Farley stated that a patient being discharged without prior examination for a rectal laceration which had gone unrecognized at the time of delivery could be an "exciting cause" of a cloaca formation. Any such rectal laceration during delivery would be cognizable by the treating physicial upon inserting a finger in the rectum at the time of delivery. Dr. Farley felt a rectal examination, rather than a visual examination, is necessary because of the potential that any rectal laceration would be hidden by the return of the stretched tissues after childbirth.

He also testified as to the effects of the cloaca condition, which included fecal material entering the vagina, accompanying menstruation, and causing sanitary

problems. He also felt the condition could have an adverse effect upon sexual relations.

Dr. Farley advised that repair surgery be postponed for six months to allow the tissues to retain their normal healthy state. Prior to repair surgery on the perineum, Mrs. Burkart had a colostomy performed by Dr. Farley and another doctor, to facilitate proper and complete repair of the perineal area. The colostomy was performed on December 4, 1978. According to both Mrs. Burkart and her husband, it was only after the colostomy that they became aware that her problems were caused by improper treatment received from Dr. Toraason during and after delivery.

On February 6, 1979, repair surgery was done on the perineal laceration by Drs. Farley and Doyle. Mrs. Burkart was released after five days. On March 5, 1979, she was again hospitalized for closure of the colostomy. Mrs. Burkart continued to have problems with alternating diarrhea and constipation from after her colostomy until the time of trial. Dr. Farley indicated that she suffered from irritable bowel syndrome as well as gaseous distention. He also stated that at no time did he have discussions with the plaintiff about her condition being the fault or legal responsibility of any person.

Also testifying at trial, as plaintiff's expert witness, was Dr. William J. Weigel, a practicing physician of 31 years in the Aurora area specializing in obstetrics and gynecology. Dr. Weigel had examined the plaintiff prior to his testimony. In response to a hypothetical question positing the facts concerning Dr. Toraason's care and treatment of the plaintiff, Dr. Weigel stated that in his opinion there were several occasions evident where the treatment rendered deviated from the skill and care ordinarily used by a reasonably qualified physician in the LaSalle/Peru area, or in a similar locality. He stated (1) that it is usual and customary procedure after an episiotomy to insert a finger in the rectum to make sure there are no stitches in the rectum and further to make sure that there is no tear in the rectal sphincter muscle. He felt that the continued severe pain on the third day

following birth was not usual and that a visual examination of the stitches would be insufficient to determine if any infection was present. He stated that a manual examination of the area should be conducted in such circumstances, followed by a vaginal or rectal examination if tenderness is found. Dr. Weigel also stated that accepted state-wide practice is that there should be no discharge postpartum without first having a bowel movement. Dr. Weigel further testified that the aforementioned deviations in treatment were the cause of the third-degree laceration or cloaca formation of the plaintiff. He also testified that it was his opinion, based upon Mrs. Burkart's history of bowel difficulty, that her bowel problems were permanent and the permanency was caused by the third-degree laceration or cloaca formation and subsequent repairs. He stated his opinion that he did not feel that a bowel movement would not cause a third-degree laceration resulting in a cloaca formation. He stated the effects of a cloaca to be: chronic constipation, inability to control gas passage, problems with sexual relations, hygiene difficulties, infection, discharge and embarrassment.

On cross-examination, Dr. Weigel admitted he had no information as to what happened on the day of Mrs. Burkart's delivery of her second child.

The defendant's expert witness was Dr. Louis Foley, a certified obstetrician and gynecologist, who had examined the plaintiff after receiving the referral from Dr. Toraason. Dr. Foley had been assisted in quite a few surgeries by Dr. Toraason. Based upon his review of the records and the history given him by plaintiff, Dr. Foley stated his opinion that the care given by Dr. Toraason did not deviate from standards for medical practice in the LaSalle/Peru area and surrounding communities in similar cases and circumstances. He stated that the method utilized to stitch the episiotomy was standard. He felt the plaintiff's problems stemmed from the fact that the baby was large, was presented in an abnormal lie, and that the plaintiff had previous hemorrhoid problems.

Also testifying for the defense was Dr. Carl Lundstrom chief radiologist at IVC Hospital-Peru. Dr. Lundstrom reviewed four x-rays of Mrs. Burkart's colon at trial. Based upon his examination of the x-rays he determined that Mrs. Burkart suffered chronic inflammatory colitis, of at least five-years duration. He stated that fistulas, fissures and abcesses in the perineum were common with this disease.

After hearing the evidence, the jury returned a verdict in favor of the plaintiff, awarding her $350,000 in damages. From that award and judgment by the court thereon, the defendant Dr. Toraason appeals.

The first issue raised by the defense is whether the plaintiff's action is barred, as a matter of law, by the statute of limitations applicable to medical malpractice actions. The defense had filed a motion to dismiss, based upon the fact that the suit was filed on November 9, 1979, allegedly more than two years after the plaintiff knew or should have known of the existence of the injury. (Ill.Rev.Stat. 1979, ch. 83, par. 22.1.) On appeal, the defense argues that the evidence indicates, as a matter of law, that plaintiff's suit is time barred.

The medical malpractice statute of limitations (Ill. Rev.Stat. 1979, ch. 83, par. 22.1) has received considerable attention recently by the Illinois Supreme Court and various appellate courts. The rule is firmly established that:

> "The statute starts to run when a person knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused. At that point the burden is upon the injured person to inquire further as to the existence of a cause of action. (Citations.) In many, if not most, cases the time at which an injured party knows or reasonably should have known of his injury and that it was wrongfully caused will be a disputed question to be resolved by the finder of fact. (Citation.) Where it is apparent from the undisputed facts, however, that only one conclusion can be drawn, the question

> becomes one for the court. (Citation.)" *Witherell v. Weimer* (1981), 85 Ill.2d 146, 156, 421 N.E.2d 869.

The court further elaborated on the wrongful causation question in *Knox College v. Celotex* (1981), ... Ill.2d ....., ... N.E.2d ..... (opinion filed November Term, 1981, #53842):

> "The term 'wrongfully caused,' as we have used that term in stating the rule, must be viewed as a general or generic term, and not a term of art. This is apparent from the holdings of *Nolan* and *Witherell* that the use of the term does not connote knowledge or negligent conduct or knowledge of the existence of a cause of action.
>
> At some point the injured person becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved. At that point, under the discovery rule, the running of the limitations period commences. As we held in *Witherell* and *Nolan*, this is usually a question of fact, and as we view the facts before us, it is a question of fact. * * *." (Page 6 of Slip Opinion.)

We conclude, as did the trial court, that the issue in the instant case was one for the trier of fact. Mrs. Burkart was aware of the nature of her injury at the time of her six-week checkup with Dr. Toraason, but there is no evidence establishing that she was also made aware that it may have been the result of Dr. Toraason's wrongful conduct during the delivery and immediately thereafter. She knew her problems stemmed from the childbirth and its aftermath, but neither Dr. Toraason nor Dr. Foley ever suggested or discussed the possibility that her difficulties may have been caused by the manner in which Dr. Toraason performed the delivery or rendered postnatal care. Mrs. Burkart at the time was 21 years old, unsophisticated in the field of medicine, and trusting in her doctor's skills and advice. On Dr. Toraason's referral, she saw Dr. Foley to discuss possible repair procedures. She continued to see Dr. Toraason for the care of her child. There is nothing in the record, save the knowledge of the

injury itself, which indicated that Mrs. Burkart, prior to December, 1978, had any information or knowledge that her injury was wrongfully caused by Dr. Toraason's conduct during or after the delivery of her second child. Mrs. Burkart stated that the first information that her problems were the result of Dr. Toraason's wrongful conduct was in December, 1978. Suit was filed in November, 1979.

The defense position is that Mrs. Burkart, from the time of her initial conversations with Dr. Foley, shortly after the six-week checkup, was possessed of sufficient knowledge so as to charge her with constructive knowledge that her injury was wrongfully caused. They rely upon *Witherell* and *Ikenn v. Northwestern Memorial Hospital* (1st Dist. 1979), 73 Ill.App.3d 694, 392 N.E.2d 440, in support of their position. In *Witherell*, where the court held as a matter of law that the action was time barred as to the drug manufacturer, there was a concurrence of a severe physical difficulty, advice from others suggesting improper medication and treament, and some medical corroboration of that advice. (85 Ill.2d 146, 156-157.) It is a case where there was sufficient specific information known to the patient that would have alerted a reasonable person as to a potential wrongful cause of the injury. As noted, no such similar information is present in the instant case, as there was no suggestion of any wrongful cause until December, 1978. In *Ikenn* the court found that the plaintiff's blindness, from infancy, was the type of "physical problem which imparted constructive knowledge that it was the result of a traumatic event occasioned by another's wrongful act." (73 Ill.App.3d 694, 699.) In *Ikenn* suit was filed 22 years after the allegedly negligent conduct, and that circumstance played a part in the court's determination, which affirmed dismissal of her complaint by the trial court. *Ikenn* was itself distinguished, not long after its appearance, by the same court in *Bebee v. Fields* (1st Dist. 1979), 79 Ill.App.3d 1009, 1013, 398 N.E.2d 1214:

> "The classification of plaintiff's condition as a traumatic or nontraumatic occurrence should not be deemed the controlling factor. In considering the

significance of such a classification, this court in *Kristina v. St. James Hospital* (1978), 63 Ill.App.3d 810, 813, 380 N.E.2d 816, stated:

> 'In our opinion, the classification of an injury as traumatic or nontraumatic, in and of itself, is of no significance. The only benefit to be derived from such a classification is that it aids in the determination of the controlling factual issue in each case, namely, when did the plaintiff discover or when should he reasonably have discovered that the injury was caused by the defendant's wrongful conduct.'

The court, citing *Lipsey*, went on to say that in a situation where the nature and circumstances of the injury are such that its cause is unknown or apparently innocent at the time it occurs, it would be manifestly unrealistic and unfair to bar a negligently injured party's cause of action before he has had an opportunity to discover that it exists." See *Watkins v. Health and Hospitals Governing Commission of Cook County* (1st Dist. 1979), 78 Ill.App.3d 468, 397 N.E.2d 228.

We view *Bebee* as a retreat from any position that the nature of the injury itself, however traumatic, can establish constructive knowledge of a wrongful cause, without a consideration of other facts and circumstances bearing on the question. As already noted, we find that the facts, in their entirety, in the instant case are such as to make the question of when plaintiff knew or should have known of the wrongful cause of her injury a factual matter for the jury to decide. As it will be in most cases, the issue was a disputed factual one for the fact finder. The facts indicate that even after learning the nature of her injury, Mrs. Burkart continued to consult Dr. Toraason and Dr. Foley, to whom she had been referred by Dr. Toraason. This indicates Mrs. Burkart's continued trust and confidence in Dr. Toraason for some time after onset of her problems. She testified that she had no reason to believe anything had been improperly done by her doctor until 1978, nor does the record show she was

ever apprised by Drs. Toraason or Foley, or anyone else, prior to 1978, that her problems may have resulted from improper treatment. We will not conclude, given these facts, that plaintiff, as a matter of law, is to be held to have constructive knowledge of the wrongful cause of her injuries. The question of knowledge was for the jury to assess and determine.

In a related argument, the defense then contends that a new trial should be ordered to determine whether the plaintiff knew or should have known of the probable wrongful cause of her injury more than two years prior to the filing of her suit. The defense position is that the jury's verdict, implicitly rejecting any limitations bar, was contrary to the manifest weight of the evidence. We disagree, as our previous discussion makes evident. The evidence, as a whole, was sufficient for the jury to have concluded that Mrs. Burkart did not have, and should not have had, knowledge of the wrongful cause of her injury until a period within two years of the filing of her action. As noted, the issue was a disputed factual one, and we will not disturb the jury's decision, where, as here, it finds sufficient support in the evidence.

The second basic issue raised by the defense is whether the jury's verdict of $350,000 is excessive. In support of its argument, the defense points to the fact that the medical expenses for repair were only $7,500, there were no lost wages, and future pain and suffering was not considered. It is further asserted that any delay greater than six months for the repair surgery was by Mrs. Burkart's voluntary choice, and, therefore, the difficulties she suffered after six months ought not to have been reflected in the jury award. We disagree. Damages in personal injury actions are not easily ascertained, because the elements of damage are often not capable of precise mathematical computation. For this reason, determinations of damages are peculiarly within the province of the fact finders. (*Swearinger v. Klinger* (3d Dist. 1968), 91 Ill.App.2d 251, 255, 234 N.E.2d 60.) In the instant case, the medical expenses are the least element of compensable damage. Mrs. Burkart had considerable

physical and emotional problems resulting from her injury. For a period of almost three years she had difficulty controlling bowel movements and bowel gas. She bathed after each bowel movement. The problems caused difficulties with her marriage as well as other social aspects of her life. She underwent considerable additional surgery in order to correct the problem, and even then there was evidence that the injury had left permanent conditions impairing normal bowel functioning. The jury heard the evidence of these considerable problems and we will not set its award aside, given the nature and extent of the evidence as to damages. In upholding the jury's verdict, we reject the defense suggestion that any problems or difficulties after six months ought to have been considered the voluntary choice of the plaintiff, since she could have had repair surgery done within six months after the discovery of her condition. It is sufficient to note that the repair surgery involved a high degree of risk, coupled with a slim chance of success, and that it was extremely costly. The decision as to whether to undergo surgery, under the circumstances, was not an easy or natural one for the plaintiff to make. It is to be noted that Dr. Foley advised her that the surgery was risky, with a high possibility of being unsuccessful and a chance that she would find herself worse off after the surgery. Under the circumstances, she will not be penalized for her delay in undergoing the repair surgery. On the facts in the record, we find no basis to reverse or alter the jury award.

Finally, the defense argues that the jury's finding of liability was contrary to the manifest weight of the evidence. We need not review the facts again, as we fully set them forth at the outset of this opinion. It is sufficient, at this time, to note that Dr. Weigel, plaintiff's expert, testified to four specific deviations, in the procedure utilized, from the normal and accepted standards of conduct applicable to the defendant in this case. To some extent, his conclusions were also supported by Dr. Farley's testimony as well. Both sides presented evidence going to the issue of the standard of care to be applied and

whether Dr. Toraason met the standards. The jury was presented with contrary evidence and it was its obligation and duty to resolve the factual disputes thereon. It did so, based upon the evidence before it. There was sufficient evidence in the record to support the jury's finding of liability. We will not disturb it.

The decision of the Circuit Court of LaSalle County is affirmed.

Affirmed.

Stouder and Scott, JJ. concur.

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62706
(217) 782-2035

October 5, 1982

Mr. Gates W. Clancy
Attorney at Law
428 W. State Street
Geneva, IL 60134

In re: Laura L. Burkart v. Mary Lou Toraason. No. 56945

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause. C.J., Ryan took no part.

/s/ JULEANN HORNYAK
Clerk of the Supreme Court

APPENDIX C

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62706
(217) 782-2035

October 25, 1982

Mr. Gates W. Clancy
Attorney at Law
428 W. State Street
Geneva, IL 60134

In re: Laura L. Burkart v. Mary Lou Toraason. No. 56945

Dear Mr. Clancy:

We are returning your petition for rehearing, under separate cover, in the above cause.

In accordance with the rules of this Court, there are no provisions for filing a petition for rehearing upon the denial of a petition for leave to appeal.

Very truly yours,

/s/ JULEANN HORNYAK
Clerk of the Supreme Court